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assign the claim to another, and send it to another state [Iowa] for the purpose of bringing garnishment proceedings in that state for the very purpose of securing the advantage afforded by the exemption laws of Iowa. This was the privilege that was open to him in common with all citizens of the United State. *Harwell* v. *Sharp*, 85 Ga. 124, 11 S. E. 561, 8 L. R. A. 514, 21 Am. St. Rep. 149. There was no statute in this state forbidding such a proceeding until the passage of chapter 57 Laws 1893. (Rev. St. Wis. 1898, § 4438 f.), which went into effect March 29, 1893. [The claim was assigned before March 1, 1893]. In *Griggs* v. *Doctor*, 89 Wis. 161, 61 N. W. 761, 30 L. R. A. 360, 46 Am. St. Rep. 824, it was held that a court of equity might properly enjoin an attempt to evade the exemption laws of this state by the prosecution of garnishment proceedings in a foreign state against one of our own residents. This principle, however, is of no avail here. A court of equity enjoins the commission of many acts for the commission of which a court of law could give no damages."

MALICIOUS PROSECUTION—CIVIL CASES.—Suit was brought upon a note and writs of attachment issued and properly levied; the suit was subsequently dismissed by request of the party in whose name the action was brought who stated that the note had been paid and that the suit had been instituted without her authority. When the motion was made to dismiss the suit, A, who had unlawfully come into possession of the note and who had in reality instituted the proceedings upon her statement that she was the owner of the note, was substituted as party plaintiff. About a year afterwards the suit was dismissed. Then the makers of the note brought an action against A for malicious prosecution alleging as damage the expense of resisting the writs of attachment, the injury to their credit and reputation, and being prevented from selling the property. It was objected that the complaint did not state facts sufficient to constitute a cause of action. *Held*, that the complaint stated in general terms a perfect cause of action and that it was proper to show as an element of damage, injury to the reputation of the plaintiffs and also the financial standing, and the ability to respond to a judgment, of the defendant. *Lord* v. *Guyot* (1902),— Colo. —, 70 Pac. Rep. 683.

As stated by Corliss, C. J., in *Kolka* v. *Jones*, 6 N. D. 461, in regard to the requisites necessary for an action for malicious prosecution; "on this very interesting question we find the decisions in hopeless conflict." There appear to be two rules:—the English rule which has been adopted by a few of the American states which is, that no suit can be instituted unless person or property has been seized and special injury sustained which would not ordinarily result in all suits prosecuted to recovery for like causes of action. *Am. & Eng. Enc. of Law*, (2d ed.), Vol. 19, p. 652. The second rule which has been adopted in most of the states is, as stated by Judge Cooley in his Elements of Torts, p. 56, note 6, that an action may be maintained for the malicious institution without probable cause, of any civil suit which has terminated in favor of the defendant. See also 1 MICH. LAW REVIEW, 131. Concerning the allowance of damages in such suits for injuries to reputation it is generally allowed to natural persons; *Kennedy* v. *Meachem*, 18 Fed. Rep. 312; *Wheeler* v. *Hanson*, 161 Mass. 370, 37 N. E. 382; *Sheldon* v. *Carpenter*, 4 N. Y. 579; but not to corporations. *Supreme Lodge* v. *Unzagt*, 76 Md. 104, 24 Atl. 323.

MALICIOUS PROSECUTION—PROBABLE CAUSE.—An insurance agent was found to be short in his accounts. Upon information by his employers, the surety company which had furnished his bond commenced a prosecution for

embezzlement; there was, however an agreement between the agent and his employers, of which the surety company had notice, by which he was given ninety days in which to pay the sums embezzled, which time had not expired when the prosecution was commenced. In an action for malicious prosecution brought by the agent against the surety company, the lower court ignored the evidence of extension of credit to the agent and instructed the jury that if they believed that the surety company was informed of the agent's shortage by his employers, there was probable cause for the prosecution. *Held*, that this omission was fatal error on the part of the lower court. *Boush* v. *Fidelity and Deposit Company* (1902), — Va. —, 42 S. E. Rep. 877.

The position of the court was that it is permissible for the court to instruct the jury that certain facts and circumstances, if they exist, are sufficient to constitute probable cause. But it is not permissible for a court to submit the question of the existence or non-existence of such facts and circumstances to a jury either upon a partial examination of them or upon a part only of the evidence relevant to the issue. It is well settled that in the consideration of the question of probable cause in cases of this kind the province of the jury is to find the facts and of the court to say whether these ascertained facts constitute probable cause. But the manner in which the court is to bring the facts before the jury differs in various jurisdictions. In some states it is customary to instruct the jury as to what is probable cause and allow them to decide whether or not probable cause existed. *Landa* v. *Obert*, 45 Tex. 539. *Cole* v. *Curtis*, 16 Minn. 182. In Kansas the court is supposed to group the facts in its instructions and it has been held error when it did not do so. *A. T. & S. F. R. R. Co.* v. *Watson*, 37 Kans. 773. In some jurisdictions the jury are given hypothetical statements of facts, *Bulkeley* v. *Keteltas*, 6 N. Y. 384, and in others this is discouraged. *Ball* v. *Rawles*, 93 Cal. 222.

MARRIAGE—COMMON LAW—PRESENT CONSENT.—The contracting parties were joined by the "sealing ceremony" of the Morman church, whereby they agreed and were declared, by a duly authorized church official, to be married "for time and eternity." The parties never lived together, but secured a Morman church divorce. *Held*, that the ceremony created a valid marriage, *Hilton* v. *Roylance* (1902), — Utah—, 69 Pac. Rep. 660.

This case is of interest chiefly, as emphasizing the position of the Michigan courts upon this question. In *Lorimer* v. *Lorimer*, 124 Mich. 631, the court held, that present consent was not sufficient to constitute a common law marriage; but must be followed by co-habitation. BISHOP, MAR., DIV. AND SEP., § 317, says:—"the mutual present consent lawfully expressed makes a marriage; what is called consummation adds nothing to its legal effect." This is clearly in accord with the weight of authority in the United States. *Dumaresly* v. *Fishly*, 10 Ky. (3 A. K. Marshall 1198) 368; *Rose* v. *Clark*, 8 Paige 574; *State* v. *Walker*, 36 Kan. 297; *Dickerson* v. *Brown*, 49 Miss. 357; *Richard* v. *Brehm*, 73 Pa 140; *Hantz* v. *Sealy*, 6 Binn. 405.

MASTER AND SERVANT—ASSUMPTION OF RISK—NEGLECT OF STATUTORY DUTY.—Plaintiff was a coal miner in the employ of defendant company. A statute of the state required all owners of coal mines to keep timbers in the mines sufficient to support the ceiling. The supply had been exhausted and the plaintiff so informed the mine boss. The boss replied that the timbers had been ordered and directed the plaintiff to continue work. No immediate danger was apparent and the premises looked reasonably safe. The plaintiff resumed work and shortly afterward was seriously injured by falling rock which would have been prevented by timbering the mine as the statute required. *Held*, that the assumption of risk, as a defense, could not be